

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
)	Chapter 11
CATHOLIC DIOCESE OF WILMINGTON, INC.,)	
a Delaware corporation)	Case No. 09-13560 (CSS)
)	
Debtor)	Related Docket Nos. 1623 and 1625

MEMORANDUM ORDER

On October 12, 2009, Catholic Diocese of Wilmington, Inc. (the "Diocese") filed bankruptcy under Chapter 11 of the Bankruptcy Code.

On July 28, 2011, the Court entered an Order [Docket No. 1471] (the "Confirmation Order") confirming the *Debtor's Conformed Second Amended Chapter 11 Plan of Reorganization of Catholic Diocese of Wilmington, Inc.*, dated as of July 28, 2011 (as may be amended and/or modified, the "Plan").

The Plan became effective on September 26, 2011 (the "Effective Date"). Upon the occurrence of the Effective Date (i) the *Catholic Diocese of Wilmington, Inc. Qualified Settlement Fund* (the "Settlement Trust") was created, and (ii) Marla Eskin was appointed as the trustee of the Settlement Trust (the "Settlement Trustee").

The Plan, among other things, mandated production of documents concerning the sexual abuse of minors pursuant to the Non-Monetary Provisions Relating to Documents (the "Non-Monetary Provisions"). The Diocese's personnel files of Charles

W. Wiggins and Kenneth Martin were to be produced under the Non-Monetary Provisions.¹

Messrs. Wiggins and Martin objected to the disclosure of their personal files and, as required by the Plan, they each filed a motion for a protective order [Docket Nos. 1623 and 1625, respectively].

On January 11, 2012, pursuant to the Court's direction, the Diocese submitted the personnel files of, among others, Messrs. Wiggins and Martin to the Court under seal for its *in camera* review. On January 17, 2012, the Court directed the Settlement Trustee to be involved in the dispute over the production of Messrs. Wiggins' and Martin's files.

On March 8, 2012, the Court entered the *Order Establishing Briefing Schedule and Hearing Date for an Adjudication of Motions for Protective Orders Filed by Charles W. Wiggins [D.I. 1623], Kenneth Martin [D.I. 1625], Harry D. Walker [D.I. 1874], and Francis J. Rogers [D. I. 1879] [Docket No. 1951] (the "Scheduling Order")*.

The Scheduling Order provided for an Initial Pleading setting forth those specific documents the movant seeks not to be produced and the basis therefore, an Opening Brief filed by the Settlement Trustee and Diocese, an Answering Brief filed in response by the movant and a Reply Brief filed by the Settlement Trustee and Diocese. Under paragraph 8 of the Scheduling Order the Court authorized and directed the parties to file under seal the Initial Pleading, Opening Brief, Answering Brief and Reply Brief.

¹ The personal files of 18 priests, including Messrs. Harry D. Walker and Francis. J. Rogers, were also scheduled to be produced. Other than Messrs. Wiggins, Martin, Walker and Rogers none of the priests objected to the production of their personnel files. The motions of Messrs. Walker and Rogers are not currently before the Court and will not be addressed.

Pursuant to the Scheduling Order, the Court conducted hearings on Messrs. Martin's and Wiggins' motions for protective order on June 19 and 20, 2012, respectively (the "Hearings").

Consistent with the provisions of the Scheduling Order and for the reasons set forth on the record at the Hearings, the Court sealed the courtroom to the public and the transcripts of the Hearings until further order of the Court. Based upon the Court's ruling on the record at the Hearings two members of the press were prohibited from entering the courtroom or attending the Hearings by telephone.

Given that "[t]he existence of a common law right of access to judicial proceedings and to inspect judicial records is beyond dispute"² the Court herein publicly sets forth the basis for its sealing of the courtroom and the record pending further order of the court. In *Publicker Industries, Inc. v. Cohen*, the Third Circuit held that there was a "common law right of access to civil trials."³ The Supreme Court has also acknowledged the historical evidence supporting arguments for the right to a public criminal trial, "is equally applicable to civil and criminal cases."⁴ "[I]n some civil cases the public interest in access, and the salutary effect of publicity, may be as strong as, or stronger than, in most criminal cases."⁵

² *Publicker Industries, Inc. v. Cohen*, 733 F.2d 1059, 1066 (3d Cir. 1984) (citing *United States v. Criden*, 648 F.2d 814, 819 (3d Cir. 1981)).

³ *Id.* at 1067.

⁴ *Gannett Co. v. DePasquale*, 443 U.S. 368, 386 (1979).

⁵ *Id.* at 387.

“Procedurally, a trial court in closing a proceeding must both articulate the countervailing interest it seeks to protect and make ‘findings specific enough that a reviewing court can determine whether the closure order was properly entered.’”⁶ “Substantively, the record before the trial court must demonstrate ‘an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.’”⁷

“The overriding interest can involve the content of the information at issue, the relationship of the parties, or the nature of the controversy.”⁸ Even if an overriding interest is found to overcome the presumption of openness, the closed hearing still has to be “narrowly trailed to serve that interest.”⁹

There is an additional public interest at play in this case that supports the Hearings being conducted in open court – the protection of children from physical and sexual abuse. The very heart of the heavily negotiated Non-Monetary Provisions was and is to shed light on the abuse of children by Catholic priests and the Church’s cover up of that abuse.¹⁰ Put another way, what happened, what did the Church hierarchy

⁶ *Publiker*, 733 F.2d at 1071.

⁷ *Id.* (citing *Press-Enterprise Co. v. Superior Court of California, Riverside County*, 464 U.S. 501, 509 (1984)).

⁸ *Publiker*, 733 F.2d at 1073.

⁹ *Press-Enterprise Co.*, 464 U.S. at 509.

¹⁰ Of course, child abuse is not limited to abuse by priests – not by a long, long shot. According to the 2010 Child Maltreatment Report published by the Children's Bureau of the United States Department of Health and Human Services, in 2010, there were 867,987 reported cases of child maltreatment nationwide, 63,527 (or 9.2%) of which were sexual abuse. In Delaware, there were 2,372 reported cases of child maltreatment in 2010, 158 or 7.4% of those cases involved sexual abuse. <http://www.acf.hhs.gov/programs/cb/pubs/cm10/cm10.pdf#page=61> (last visited 6/20/2012).

know and when did it know it, and, finally, what did the Church do about it?. The answer was too often that they knew much and did little – all of it in secret.¹¹

Balanced against this strong public policy in favor of openness, however, are the privacy rights of Messrs. Wiggins and Martin as well as the integrity of the judicial process. The very issue before the Court is whether to order the disclosure of the files. In order to make that determination the Court must hold a hearing that, by its very nature, involves the substance of the files. It would make a mockery of the judicial process and the rights of Messrs. Wiggins and Martin to have a public hearing on whether information should be made public.

As a result, the Court sealed the courtroom and the record pending further order. Whether the record of the Hearings will be made public in whole or in part rests on the Court's ruling on whether the files themselves should be made public and to what extent.

Thus, the Court will revisit its ruling sealing the courtroom and the record in the context of its decision as to whether the files themselves should be made public. This also applies to the sealing of the Initial Pleading, Opening Brief, Answering Brief and Reply Brief.

¹¹ It is important to note that the Diocese has fully abided by its obligations under the Non-Monetary Provisions of the Plan.

NOW THEREFORE IT IS FOUND, ORDERED and DECREED that (i) the record of the Hearings; and (ii) the Initial Pleading, Opening Brief, Answering Brief and Reply Brief shall remain sealed pending further Order of the Court.



Christopher S. Sontchi
United States Bankruptcy Judge

Dated: June 20, 2012